

***NEW HAMPSHIRE CODE OF
ADMINISTRATIVE RULES***

CHAPTER Odb 600

Rules for Reimbursement/Disbursement From
the Gasoline Remediation & Elimination of
Ethers Fund Under RSA 146-G

Effective January 29, 2002

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CHAPTER Odb 600 RULES FOR REIMBURSEMENT FROM THE GASOLINE REMEDIATION AND ELIMINATION OF ETHERS FUND UNDER RSA 146-G

PART Odb 601 REIMBURSEMENT PROCEDURES

Statutory Authority: RSA 146-G: 11

Odb 601.01 Purpose. The purpose of these rules is to establish eligibility criteria and procedures for reimbursement of funds under authority of RSA 146-G.

Source. #7633, eff 1-29-02

Odb 601.02 Applicability. These rules shall apply to reimbursement for costs incurred on or after the effective date of these rules.

Source. #7633, eff 1-29-02

Odb 601.03 Definitions.

- (a) "Board" means the oil fund disbursement board established by RSA 146-D:4.
- (b) "Contamination" means the presence of gasoline containing ethers in the groundwater, surface water or soil, at concentrations exceeding State of New Hampshire regulatory environmental or health risk standards.
- (c) "Contractor" means a person who performs services under a formal written agreement that specifies the service performed and the terms and conditions of the service.
- (d) "Department" means the New Hampshire department of environmental services.
- (e) "Fund" means the gasoline remediation and elimination of ethers fund established under RSA 146-G.
- (f) "Owner" means a person in possession of or having legal title to a public water supply system, non-public water supply system, or private water supply that is contaminated.
- (g) "Reasonable cost" means the prevailing market rate for labor, equipment, materials, goods, services or task.
- (h) "Reimbursement" means an assignment of money from the fund in payment of reimbursable costs.

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- (i) "Vendor" means a person who provides materials or services under an informal agreement.

Source. #7633, eff 1-29-02

Odb 601.04 Limits of Fund Availability.

(a) The fund shall be available to pay removal costs as defined in RSA 146-G: 2, XII, and for corrective measures under RSA 146-G: 6.

(b) The fund shall be available to pay costs for work authorized by the board to remedy contamination, subject to department approval of a work scope and budget.

Source. #7633, eff 1-29-02

Odb 601.05 Contracts. Service contracts may provide for direct payment to a contractor from the fund, but shall not provide for separate payment to individual subcontractors.

Source. #7633, eff 1-29-02

Odb 601.06 Reimbursement Not Contract. Reimbursement from the fund shall not be considered a contract.

Source. #7633, eff 1-29-02

Odb 601.07 Permits Required. Nothing contained in these rules shall relieve any person from obtaining the necessary appropriate federal, state, and local authorization, certification, design approval or permits as required.

Source. #7633, eff 1-29-02

Odb 601.08 Right to Enter. A contractor, owner, or water supply system owner shall allow the department, or board or its designee, to enter, during normal business hours, or other mutually agreed time, and with 5 business days notice, any property, office, construction site, treatment facility or other related location, to:

- (a) Inspect any work activity reimbursable under RSA 146-G;
- (b) Inspect records with regard to compliance with department rules; and
- (c) Inspect records with respect to costs.

Source. #7633, eff 1-29-02

Odb 601.09 Financial Audit. A contractor, owner, vendor, or water supply system owner shall allow the board or its designee to conduct financial audits of all records pertinent to work activity reimbursable under RSA 146-G to ensure compliance with these rules.

Source. #7633, eff 1-29-02

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Odb 601.10 Technical Audit. A contractor, owner, or water supply system owner shall allow the department, or board or its designee, to conduct technical audits to determine if work was performed in accordance with standard engineered construction practices and department rules.

Source. #7633, eff 1-29-02

Odb 601.11 Reimbursement for Work-In-Progress. Reimbursement requests may be submitted for partially completed work based on a schedule for completion of the work approved by the department prior to commencement of construction.

Odb 601.12 Reimbursement Under Lump-Sum Contracts. Reimbursement under lump-sum contracts shall be based on the percent completion of department-approved tasks.

Source. #7633, eff 1-29-02

Odb 601.13 Work Performed by Owner or Water Supply System Owner. Any owner or water supply system owner may perform work reimbursable under RSA 146-G using its own employees and equipment subject to other applicable requirements or limitations of these rules. Reimbursement shall be limited to actual costs based on employee pay rates, cost of benefits and equipment operating costs. Under no circumstances shall an owner or water supply system owner profit from any reimbursement from the fund.

Source. #7633, eff 1-29-02

Odb 601.14 Work Scope and Budget Approval. Reimbursement from the fund shall be contingent upon department approval of a work scope and budget prior to commencement of any work to investigate or remedy contamination. Work scopes and budgets shall be approved based on economic feasibility and conformance with technical criteria given under department rules for remediating contamination.

Source. #7633, eff 1-29-02

Odb 601.15 Interim Water Supply. Temporary supplies of potable water, including but not limited to, bottled water and point-of-entry treatment, shall only be available through department contractors or vendors, unless an owner receives specific advance authorization from the department to seek temporary water services directly. Such authorization shall only be granted when the department is not able to respond to an emergency situation due to the limited availability of its contractors.

Source. #7633, eff 1-29-02

Odb 601.16 Connection to Existing Public or Non-public Water Supply System.

(a) An owner of a private water supply may request reimbursement for permanent connection to a public or non-public water supply system available at or near the owner's property boundary.

(b) The owner shall provide a letter from the water supply system owner or operator authorizing the connection when submitting a work scope and budget to the department.

(c) Connections to an existing public or non-public water supply system shall be approved based on conformance with technical criteria given under Env-Ws 300, We 600, We 700 and We 800, as applicable.

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(d) If applicable, the owner shall provide a letter from the water supply system owner or operator stating the work was inspected and meets all connection requirements, when submitting a reimbursement request to the fund.

(e) Reimbursable costs shall include the installation of all piping, plumbing connections and appurtenances necessary to provide a permanent connection to a public or non-public water supply system, standard one-time connection fees assessed by the water supply system owner, if any, and the costs required to abandon a contaminated supply well.

Source. #7633, eff 1-29-02

Odb 601.17 Replacement of Private Water Supply.

(a) An owner of a private water supply may request reimbursement for the installation of a new or replacement groundwater supply well and appurtenances.

(b) A new or replacement private water supply shall be approvable if connection to a public or non-public water supply system is not available, or if the cost of connection would exceed the cost of establishing a viable new or replacement private water supply, as determined by the department.

(c) Installations of private groundwater supply wells shall be approved based on economic feasibility and conformance with technical criteria given under Env-Ws 300, We 600, We 700 and We 800, as applicable.

(d) Reimbursable costs shall include all site location and development activities, construction of the supply well and pump installation, treatment systems, piping installations, plumbing connections and all other necessary appurtenances, startup costs, and the costs required to abandon a contaminated supply well.

Source. #7633, eff 1-29-02

Odb 601.18 Public and Non-public Water Supply Systems.

(a) An owner of a public or non-public water supply system may request reimbursement for the construction of a distribution system extension to serve contaminated properties, for construction of new treatment processes to remedy contamination, and for costs of replacement of a contaminated water supply well.

(b) The owner shall submit a feasibility report prepared by a New Hampshire licensed professional engineer describing the proposed project in detail, including the following information:

- (1) A discussion of the overall necessity of the project with respect to the level of contamination requiring remediation and the ability of the project to provide a long term solution to the problem;
- (2) Data regarding the extent of contamination including the number of properties and residential units or their equivalents affected;
- (3) Data regarding the number of non-contaminated properties and residential units potentially benefiting by the project compared with the number affected by the contamination;

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(4) The proposed apportioned share of the construction costs based on the criteria given under Odb 601.19;

(5) A discussion of the alternatives considered and the rationale for the selection of the proposed project; and

(6) A detailed project cost estimate including the total amount of reimbursement ultimately sought from the fund.

(c) Extensions or improvements to existing public or non-public water supply systems, or construction of new systems, shall be approved based on economic feasibility, conformance with technical criteria given under Env-Ws 300, as applicable, and conformance with the apportioning criteria of Odb 601.19, if applicable.

(d) Reimbursable costs for distribution system improvements, water supply treatment system installation, or water supply well replacement, shall be determined by the board on a case-by-case basis in consideration of the following:

(1) The need for new distribution system storage or pumping capacity in the operation of a distribution system extension;

(2) Whether new water supply treatment systems and system capacity are limited to that specifically required to remove contamination; and

(3) The total safe yield lost or gained when replacing water supply wells.

(e) Reimbursable costs shall include all project feasibility report preparation costs and preliminary design costs, whether or not a project proceeds to construction.

Source. #7633, eff 1-29-02

Odb 601.19 Apportioned Share of Construction Costs for Public or Non-public Water Supply System Extensions. Water supply system extension costs payable under the fund shall include the costs determined by multiplying the percentage of properties serviced, which are contaminated, by the total project engineering and construction costs attributable to the installation of the distribution mains and appurtenances, plus 100% of the connection costs and the costs required to abandon the existing water supply, for each contaminated property.

Source. #7633, eff 1-29-02

Odb 601.20 Reimbursement Limitations.

(a) Reimbursable costs shall be limited to those charged by contractors or vendors, unless the work is performed by an owner, or a water supply system owner.

(b) The costs for local, state or federal inspection fees, or charges related to obtaining access, shall not be reimbursable.

(c) The costs for restoration of property shall not be reimbursable if the costs did not directly result from contamination project work.

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- (d) Legal costs shall not be reimbursable.
- (e) Administrative, fiduciary, management or supervisory costs shall not be reimbursable.
- (f) Interest charges on unpaid invoices shall not be reimbursable.
- (g) With the exception of competitively bid services, reimbursement shall be limited to reasonable costs as defined by Odb 601.03(g).
- (h) With the exception of competitively bid services, no reimbursement shall exceed actual invoiced costs paid or incurred less any discounts received.
- (i) With the exception of competitively bid services, costs invoiced by a general contractor for administration of subcontracted services shall be limited to 10 percent of the actual invoiced costs for the subcontracted service paid or incurred less any discounts received.
- (j) Costs in excess of approved budgets shall not be reimbursable without department approval of a written justification provided pursuant to Odb 601.23(a)(9).
- (k) Reimbursable costs for water mains greater than 8 inches in diameter shall be based on the installation cost for an 8-inch water main.
- (l) With the exception of point-of-entry treatment systems, reimbursable costs shall not include operation and maintenance costs, user fees, or meter-setting costs.
- (m) Costs paid by insurance shall not be reimbursable.
- (n) For competitively bid services, reimbursable costs shall be limited to costs invoiced for approved bid and change order items, at approved unit costs, for approved quantities measured in place or otherwise certified by the engineer as completed work, installed and operational.
- (o) No reimbursement shall be approved for any work that does not meet the performance standard established by the department at the time of work scope approval.

Source. #7633, eff 1-29-02

Odb 601.21 Forms.

- (a) Requests for reimbursement authorization shall be submitted to the board on forms provided by the board, or an exact copy.
- (b) Requests for reimbursement authorization shall include the following information:
 - (1) Authorization information, including the type of project;
 - (2) Project location information including:

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- a. Project name;
- b. Address;
- c. Town; and
- d. The department project number, if known;

(2) Payee information including:

- a. Contractor, owner, vendor, or water supply system owner name, as applicable;
- b. Mailing address;
- c. Daytime phone number;
- d. The payee's affirmation statement, namely *“I declare that the representations made in this Request for Reimbursement Authorization are to the best of my knowledge true and correct. I agree to reimburse the fund for any payments made to me based upon incorrect information on this form, or incorrect claim submittal information”*;
- e. The payee's signature; and
- f. The date signed.

Source. #7633, eff 1-29-02

Odb 601.22 Requests for Reimbursement. A contractor, owner, vendor, or water supply system owner may request reimbursement upon satisfactory completion of work. Periodic requests may be submitted for on-going activities pursuant to Odb 601.11.

Source. #7633, eff 1-29-02

Odb 601.23 Reimbursement Submittal Requirements.

(a) Requests for reimbursement shall include:

- (1) For an initial request, a completed request for reimbursement authorization form that includes the information required under Odb 601.21;
- (2) A summary of invoiced expenses;
- (3) A copy of the department work scope approval notice, as applicable;
- (4) Copies of all contractor, subcontractor and vendor invoices or payment requests for expenses;
- (5) Copies of all activity reports not previously submitted, as applicable;

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- (6) A copy of the contract under Odb 601.05, if applicable;
- (7) Employee dates worked, number of hours worked, pay rate, cost of employee benefits and equipment operating cost data for work performed by an owner or water supply system owner;
- (8) A list, or brief description of the information included in the reimbursement request submittal, in the form of a cover or transmittal letter; and
- (9) If an approved work scope budget was exceeded, a written justification that explains the need for the additional work, details the incremental costs of the additional work and provides an explanation of how the additional work was consistent with the scope of the original approved budget.

(b) A re-submittal of information related to a reimbursement request previously reviewed by the department or board shall include an explanation of the basis of the re-submittal and a copy of the reimbursement approval notice issued under Odb 601.24, indicating which invoices are being re-submitted.

Source. #7633, eff 1-29-02

Odb 601.24 Reimbursement Approval Procedures.

- (a) Upon receipt of a request for reimbursement, the department shall determine if the request is complete pursuant to Odb 601.23. Incomplete requests shall be returned within 30 days of receipt.
- (b) The board shall request that the department report its recommendation for reimbursement within 90 days of receipt of a complete request.
- (c) In consideration of the criteria of these rules and the department recommendation, the board shall determine the amount of reimbursement, and shall authorize the state treasurer to disburse said amount from the fund.
- (d) All reimbursements made from the fund for unpaid owner costs shall be co-payable to the owner and the contractor or vendor.
- (e) The board shall issue, through the department, a notice of reimbursement to the contractor, owner, vendor, or water supply system owner, as applicable.

Source. #7633, eff 1-29-02

Odb 601.25 Priority. If the balance in the fund is not sufficient to pay all uncontested reimbursement claims and unpaid obligations of the department, the board shall consider payment requests in the chronological order received.

Source. #7633, eff 1-29-02

Odb 601.26 Construction Financing. If the balance in the fund plus projected revenues is not sufficient to pay all current uncontested reimbursement claims, current obligations of the department, and estimated

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future reimbursement claims for known projects, the board shall require that construction projects approved under Odb 601.18 be financed through notes or bonds. In such cases, the fund shall be available for administration costs and for periodic payments of principle and interest due under the note or bond, subject to the other limitations of these rules.

Source. #7633, eff 1-29-02

Odb 601.27 Requests for Waivers.

(a) A contractor, owner, vendor or water supply system owner, may request the board to waive the application of these rules, unless such request, if granted, would constitute a waiver of statutory requirements.

(b) Requests for waivers shall be:

(1) Submitted in writing to the board; and

(2) Include the following information:

a. A specific reference to the section of the rule for which a waiver is being sought;

b. A full explanation of why a waiver is necessary;

c. A full explanation of the alternatives for which a waiver is being sought, if applicable, with supportive information; and

d. A full explanation of how the granting of a waiver would be consistent with the intent of RSA 146-G and these rules.

(c) The board shall approve a request for a waiver upon finding that the alternatives proposed are at least equivalent to the requirements of the rule, and are adequate to ensure that the provisions of RSA 146-G are met.

(d) The board shall provide written notice of its decision.

Source. #7633, eff 1-29-02

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APPENDIX

Rule	Statutes Implemented
Odb 601.01 – 601.27	RSA 146-G:6, I RSA 146-G:6, II